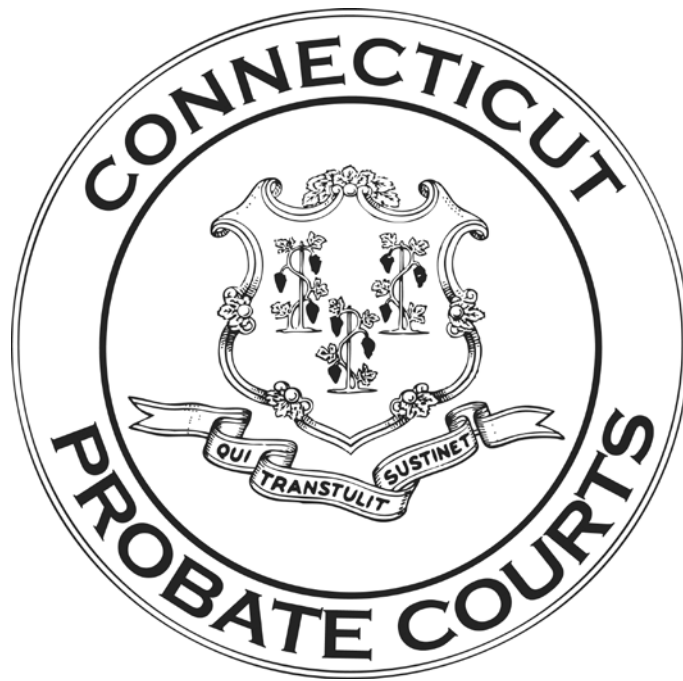


PROBATE COURT USER GUIDE

GUARDIANSHIPS OF MINORS



PUBLISHED BY
OFFICE OF THE
PROBATE COURT ADMINISTRATOR
STATE OF CONNECTICUT

COMPLIMENTS OF YOUR LOCAL PROBATE COURT

INTRODUCTION

The Probate Courts have the authority to appoint or remove a guardian of the person or estate of a minor. Court-appointed guardians are responsible to the Probate Court for protecting the interests and assets of the minors trusted to their care.

This booklet has been prepared to answer some questions regarding the procedures, roles and responsibilities of the Probate Court and the court-appointed guardian. It is only a guide in connection with the guardianship process. Individuals with substantive legal or procedural questions should seek the advice of an attorney.

Application forms for guardianships and other probate matters are available online at www.ctprobate.gov. Click on "Probate Court Forms." Forms are also available at the Probate Courts.

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What Is Guardianship?

In Connecticut, a person under the age of 18 is considered to be a minor. A guardian is a person who has the legal right and duty to take care of a minor or a minor's property. Guardianship results either by virtue of the role as parent of the minor or appointment by a Probate Court or other court of competent jurisdiction. This right and duty includes the obligation of care and control of that minor and/or his property and the authority to make major decisions affecting the minor's welfare. In some states, guardianship also refers to persons who manage the estate or person of an adult, but guardianship in Connecticut refers only to minors, except in the case of persons with intellectual disability.

There are two types of guardianship for minors: guardianship of the person of a minor and guardianship of the estate of a minor. A guardian of the person has the responsibility to care for the person of the minor. A guardian of the estate is required to manage the property of the minor. The following is a description of the duties and responsibilities of guardians for minors.

Guardian of the Person of a Minor

The guardian of the person of a minor is an adult authorized by law to take physical control of, and provide care for, the minor. That broad authority includes making medical and personal decisions concerning the welfare of the minor. By law, the birth parents of a child born in wedlock are entitled to, and expected to, exercise the care of, and the control over, the minor on a daily basis. For this reason, they are automatically the guardians of the person of the minor. They are also "joint guardians" of the minor, which means that each has equal powers, rights and responsibilities with respect to the minor, unless altered by a court.

The father and mother of a child born out of wedlock are also joint guardians, provided the father's paternity has been determined under the laws of Connecticut. In cases where this has not occurred, the mother is the sole guardian of the person of a minor. If a minor has no guardian, or if the parents have been removed as guardians, the Probate Court may appoint a guardian of the person of a minor.

Several additional subcategories of guardianship are discussed on the following pages.

Temporary Guardian of the Person of a Minor

If a parent or guardian of the person of a minor is unable to care for the minor for a period of time due to illness or absence from the area or for some other reason, the parent or guardian may file an application for appointment of a temporary guardian of the person of a minor in the Probate Court for the district in which the minor resides.

The temporary guardian serves **with**, but does not replace, the parent as natural guardian, so that either the parent or the temporary guardian may make important

decisions affecting the child. The temporary guardianship will terminate immediately whenever the parent notifies the Probate Court and the temporary guardian that the parent wants to revoke it. The appointment may not last for more than one year, but the parent may file a new application for temporary guardianship when it expires.

Standby Guardian

C.G.S. section 45a-624 allows a parent or guardian to designate a standby guardian of the person. The standby guardianship will take effect upon the occurrence of a specified contingency, including, but not limited to, the mental incapacity, physical debilitation, or death of the parent or guardian. The designation must be in writing, it must be signed by the parent or guardian and it must be witnessed by at least two witnesses. The standby guardianship may be revoked at any time. The revocation must be made in writing, and the standby guardian must be notified.

In order for the guardianship to take effect, the standby guardian must complete an affidavit indicating that the contingency upon which the guardianship is based has occurred. The affidavit must be signed, witnessed and sworn to under oath. The standby guardianship will cease when the specified contingency no longer exists or at the end of one year, whichever is sooner. Generally, no Probate Court involvement is required.

If the parent or guardian dies while the guardianship is in effect, the guardianship will cease 90 days after such death, unless the standby guardian files an application for guardianship with the Probate Court in the district in which the minor resides, and temporary custody of the minor is granted to the standby guardian **or** the court appoints the standby guardian as guardian of the person of the minor.

Like the temporary guardian, the standby guardian does not replace the parent, unless the parent is no longer physically or mentally able to carry out his or her responsibilities as parent.

Co-Guardians

Pursuant to the provisions of C.G.S. section 45a-616, a parent or guardian who is the sole guardian of the person of a minor child may apply to the Probate Court in the district in which the child resides for the appointment of one or more persons to serve as co-guardian(s). Upon receipt of an application for the appointment of a co-guardian(s), the court will, in most cases, order an investigation and report to be completed DCF as required by C.G.S. section 45a-619. The hearing will be held within 30 days of receipt of the results of the investigation. If the court waives the investigation requirement for cause shown, the hearing will be held within 30 days of the receipt of the application. If the minor child is over 12 years of age, the court will give notice to the minor. The court will notify the petitioner and all other interested parties by regular mail.

Whenever the court appoints a guardian or co-guardian, it must take into consideration the following factors:

- (1) The ability of the prospective co-guardian(s) to meet the physical, emotional, moral and educational needs of the minor on a continuing day-to-day basis.
- (2) The minor's wishes if he or she is over the age of 12 OR is of sufficient maturity and capable of forming an intelligent preference.
- (3) The existence or nonexistence of an established relationship between the minor and the prospective co-guardian(s).
- (4) The best interests of the child.

When the appointment takes effect, the co-guardian(s) have the obligation of care and control and the authority to make major decisions affecting the minor's welfare, including, but not limited to, consent determinations regarding marriage, enlistment in the armed forces and major medical, psychiatric or surgical treatment. **These rights and obligations are to be shared with the parent or the previously-appointed guardian of the person of the minor, and they may be exercised independently by the parent/guardian or the co-guardian(s).** In the event of a dispute between a parent/guardian and the co-guardian(s), the matter may be submitted to the Probate Court that appointed the co-guardian(s).

The appointment of the co-guardian(s) may take effect immediately after the hearing or, if requested by the parent/guardian, it may take effect upon the occurrence of a specified contingency. The specified contingency may include, but is not limited to, the mental incapacity, physical debilitation or death of the parent or guardian. When the contingency occurs, the prospective co-guardian(s) must notify the court by written affidavit. The court may hold a hearing to verify the occurrence of the contingency. Upon verification, the appointment will take effect and will continue until further order of the court. The co-guardian(s) must accept the appointment in writing. If the court deems it necessary, a probate bond may be required.

Upon the death of the parent/guardian, any appointed co-guardian(s) of the person of a minor child shall become the sole guardian(s) of the person of the minor child.

Permanent Guardianship

A court-appointed guardian of the person may, in certain specific circumstances, be designated a "permanent guardian." A permanent guardian will serve until the child reaches the age of majority, with no ability on the part of a removed parent to seek reinstatement. Permanent guardianship may, in some situations, provide an alternative to the termination of parental rights, while providing permanency for the child.

Removal of Parent or Other Guardian of the Person of a Minor

One or both parents of a minor may be removed as guardian of the person by a Probate Court if the court finds certain conditions to be present, or if the parent

consents to be removed as guardian. Any adult relative of the minor or an attorney representing the minor may file an application for the removal of one or both parents as guardian in the Probate Court for the district in which the minor resides. Under certain circumstances, the court may also initiate such an action on its own motion.

Upon receipt of an application for removal of guardian, the court will set a time and place for a hearing on the application and notify all interested parties. Both parents of the minor and the minor, if 12 years of age or over, will be notified of the hearing. If a parent resides in another state or is absent from the state, he or she may be notified by registered or certified mail. If the whereabouts of a parent are unknown, the court may order notice to be given by publication in a newspaper that has a circulation at the parent's last known place of residence.

Any parent who is the subject of such an application has the right to be represented by an attorney and may request the court to appoint an attorney if he cannot obtain or pay for one. The court will appoint a guardian ad litem to protect the rights of any parent who is a minor or is incompetent. In all cases involving allegations of abuse or neglect, the court *must* appoint counsel to represent the minor child. The court may also appoint counsel to represent the child in other cases. The court may also appoint a guardian ad litem for the minor if the court deems it appropriate.

When an application for removal of a guardian has been filed, the court will, in most cases, order an investigation and report to be completed by DCF. An investigation is required in cases where the applicant has alleged, or the probate judge has reason to believe, that the minor child has been abused or neglected. The DCF investigation and report will include facts that may be relevant to the court's determination whether the action sought will be in the child's best interests.

Pursuant to C.G.S. section 45a-609, the court may order the examination of the child by a physician, psychiatrist or licensed clinical psychologist. The court may also order the examination of a parent or custodian whose competency or ability to care for the child is at issue. The expenses of any examination ordered by the court on its own motion will be paid by the applicant; the expenses of any examination requested by another party shall be paid by the party requesting the examination. If such applicant or the party requesting the examination is unable to pay for the examination, payment will be made by the state.

After a hearing, the court may remove a parent or other court-appointed guardian as guardian if it finds by clear and convincing evidence that **one or more** of the following conditions are present:

- (1) The parent consents to removal as guardian.
- (2) The minor child has been abandoned by the parent in the sense that the parent has failed to maintain a reasonable degree of interest, concern or responsibility for the minor's welfare.

- (3) The minor child has been denied the care, guidance or control necessary for his or her physical, educational, moral or emotional well-being as a result of acts of parental commission or omission, whether the acts are the result of the physical or mental incapability of the parent or conditions attributable to parental habits, misconduct or neglect, and the parental acts or deficiencies support the conclusion that the parent cannot exercise, or should not in the best interest of the minor child be permitted to exercise, parental rights and duties at this time.
- (4) The minor child has had physical injury or injuries inflicted upon him or her by a person responsible for such child's health, welfare or care **or** by a person given access to such child by such responsible person, other than by accidental means, **or** has injuries that are at variance with the history given of them **or** is in a condition that is the result of maltreatment such as, but not limited to, malnutrition, sexual molestation, deprivation of necessities, emotional maltreatment or cruel punishment.
- (5) The minor child has been found to be neglected or uncared for, as defined in C.G.S. section 46b-120.

If both parents are removed, the court may appoint another person to serve as guardian of the person. (See "Appointment of Guardian of the Person of a Minor" on page 11.)

Due to the serious consequences resulting from filing an application for removal of a parent or other person as guardian and the complex nature of the legal grounds for the removal, anyone considering such action should seek legal advice prior to filing such an application. There are legal penalties for willfully filing a false application, conspiring with another to file a false application or testifying falsely in any removal proceeding.

Temporary Custody or Immediate Temporary Custody of the Minor Pending Removal of Guardian

Temporary custody concerns the custody of the minor while the application for removal of parent as guardian is pending before the court and until the court renders a decision on that application. After holding a hearing on the matter, the court may award temporary custody of the minor to an appropriate custodian pending the removal hearing if:

- (1) The court determines that the parent has either abandoned the minor in the sense that the parent has failed to maintain a reasonable degree of interest, concern or responsibility for the minor's welfare, **OR**
- (2) The court determines that the minor has been denied the care, guidance, or control necessary for his physical, educational, moral or emotional well-being, **OR**

(3) The court determines that the minor has had physical injury or injuries inflicted upon her by a person responsible for such child's health, welfare, or care or by a person given access to such child by such responsible person, other than by accidental means **or** has injuries which are at variance with the history given of them **or** is in a condition which is the result of maltreatment, **AND THAT**

(4) These acts place the health or welfare of the minor in danger.

Under certain stringent conditions, the court may order **immediate** temporary custody **without a hearing** if the court finds that:

(1) The child was not taken or kept from the custodial parents, **AND**

(2) There is a substantial likelihood that the child will be removed from the Probate Court district prior to a hearing, **OR**

(3) To return the child to the parent would place the child in circumstances that would result in serious physical illness or injury, or the threat thereof, or imminent physical danger prior to a hearing for temporary custody.

Generally, the court may not grant immediate temporary custody of a child in the physical custody of a parent. However, it may do so if the child is hospitalized as a result of a serious physical illness or injury, and a certificate signed by two Connecticut doctors is filed with the court stating that:

(1) The child is in need of immediate medical or surgical treatment, the delay of which would be life-threatening.

(2) The parent refuses or is unable to consent to such treatment.

(3) Determination of the need for temporary custody cannot await a formal hearing.

If the court orders immediate temporary custody without prior notice to the parents, a hearing must be held within five business days after the date of the order to determine whether the statutory requirements exist to continue temporary custody.

The rights and duties of the temporary custodian are: the obligation of care and control, the authority to make decisions regarding routine medical treatment or school counseling and psychological, emergency medical, psychiatric or surgical treatment and any other rights and duties that the Probate Court may order.

An order for temporary custody is not permanent, and the order will be in effect only until a determination can be made on the application for removal of the guardian.

Child Support Orders in Removal and Custody Matters

If a minor child is the subject of a pre-existing child support order issued by the Superior Court, certain procedures must be followed when the court removes a parent as guardian or transfers custody or guardianship of the child. The Support Enforcement Services Unit at the Department of Social Services must be notified when:

- (1) The custody of the child is returned to the parent ordered to pay child support, in which case the child support order will be suspended, **OR**
- (2) The court grants guardianship or custody to a new guardian.

The telephone number of the Support Enforcement Unit is 1-800-228-5437.

Transfer to a Regional Children's Probate Court

On its own motion or that of any interested party, the Probate Court may transfer any guardianship or custody matter to a regional children's probate court. This includes cases involving removal of guardianship, immediate temporary custody, temporary custody, temporary guardianship and co-guardianship.

Transfer of Contested Matters to Superior Court

Before a hearing is held on the merits of a contested removal or guardianship matter, the Probate Court *shall* transfer the case to the Superior Court at the request of any party except the petitioner in a removal matter. The court *may*, on its own motion or on the motion of the petitioner in a contested removal matter, transfer the matter to the Superior Court.

Visitation Rights of Parent Removed as Guardian

A Probate Court may grant visitation rights to any person who has been removed as guardian of any minor child or children, any relative of any minor child or children or any parent who has been denied temporary custody of any minor child or children pending a removal or termination of parental rights hearing. An order to this effect must be made by the court after the hearing. The court must be guided by the best interest of the minor, giving consideration to the minor's wishes if he or she is of sufficient age and is capable of forming an intelligent opinion.

Reinstatement of Guardianship Rights

Any parent or other guardian of the person of a minor who has been removed as guardian may apply to the Probate Court that removed the parent for reinstatement if, in his or her opinion, the factors that resulted in the removal have been resolved satisfactorily.

After the hearing, if the court determines that the factors that resulted in the removal of the parent have been resolved satisfactorily, the court may reinstate the parent as guardian of the person of the minor.

Appointment of Permanent Guardian

Following the removal of the parents as guardians in the manner discussed above, the court may appoint a permanent guardian if certain additional steps are followed. A permanent guardianship is intended to last until the child reaches majority at age 18 and to provide permanency for the child without the need to terminate the parental rights of the parents.

In addition to the steps required for removal of the parents as guardians, before appointing a permanent guardian the court must find by clear and convincing evidence that:

- (1) One of the grounds for termination of parental rights exists, or the parents' consent.
- (2) Adoption of the child is not possible or appropriate.
- (3) If the child is 12 or over, the child consents.
- (4) If the child is under 12, the proposed permanent guardian is a relative or is already permanent guardian of a sibling of the child.
- (5) The child has resided with the proposed permanent guardian for at least one year.
- (6) The proposed permanent guardian is suitable and worthy and is committed to remaining as permanent guardian until the child reaches age 18.

Once appointed, a permanent guardian has all the same powers and duties of any other guardian. However, following the appointment of a permanent guardian, the removed parents may not seek reinstatement as guardians, nor may they petition the court for the removal of the permanent guardian.

If the permanent guardian becomes unable or unwilling to fulfill the duties and responsibilities of the permanent guardianship, the court may appoint another person as permanent guardian or may reinstate the parents if the court finds the factors that resulted in the removal have been resolved satisfactorily.

Appointment of Guardian of the Person of a Minor

If all parents have been removed, or if the minor has no guardian of the person due to the death of his or her parents, the Probate Court for the district in which the minor resides may appoint a guardian for the minor. If the court removes only one parent as guardian, or if one parent dies, the remaining parent is the sole guardian of the person of the minor.

If the minor is age 12 or over, the court shall take into consideration the minor's wishes in appointing a guardian of the person. Factors the court will consider when selecting an appropriate person to be guardian are the ability of the prospective guardian to meet, on a continuing day-to-day basis, the physical, emotional, moral and educational needs of the minor and the existence or nonexistence of an established relationship between the minor and the prospective guardian.

The guardian of the person of a minor must present an annual report about the minor's condition to the Probate Court that appointed the guardian. The report form, PC-570, will be given to the guardian at the time of appointment, with instructions to submit the report to the court one year from the date of appointment.

Guardianship of the person will terminate when the minor reaches the age of 18, dies or if the parent is reinstated by the court.

Appointment of Guardian of the Estate of a Minor

A guardian of the estate of a minor has legal control over the financial affairs of the minor. The parent or guardian of the person of a minor may, without appointment by the court, manage the property of the minor if the assets are valued at \$10,000 or less. However, if the minor's estate exceeds \$10,000 in value, a guardian of the estate of the minor must be appointed by the Probate Court for the district in which the minor resides. If the minor is not a Connecticut resident but owns property in the state, the Probate Court for the district in which the property is located may appoint a guardian of the estate who shall manage the minor's property.

Although the Probate Court may appoint any suitable person as the guardian of the estate of a minor, the court will ordinarily look first to the parents or the guardian of the person of the minor. If that person is unwilling or unqualified for the appointment, the Probate Court will appoint some suitable person as guardian, and, if the minor is 12 years of age or over, he or she may propose a guardian to the court.

The court may require the guardian of the estate to furnish a probate bond for the protection of the minor's property. The amount of the probate bond is usually equal to the value of the assets of the minor's estate, excluding any real property. When a bond is required, the appointment of a guardian of the estate is not effective until the probate bond is filed with the court. In addition, the judge may waive the requirement of a bond if the minor's assets are less than \$20,000.

The bond may also be waived if the assets are held in a restricted account. This requires a written agreement on a form available from the court, under which the bank agrees not to release any funds to the guardian without prior court approval. (See *Probate Court Rules of Procedure* section 35.7.)

Duties of the Guardian of the Estate of a Minor

The guardian of the estate of a minor has control over all of the minor's property, whether acquired before or after the guardian's appointment, except for property managed under the Uniform Transfers to Minors Act or under a trust. The minor's property may only be used for the benefit of the minor. It may not be used to pay the expenses that a parent or guardian of the person is legally responsible to provide. Investments of a minor's property by a guardian are strictly limited by law.

The guardian of the estate should file copies of the Fiduciary's Probate Certificate with persons or agencies where the minor's ownership of property is a matter of record. The certificate provides notice that the minor's property has come under the jurisdiction of the Probate Court and that the guardian of the estate has been given custody of such property.

Within two months of appointment, the guardian must file an inventory with the court listing all of the minor's property at its fair market value as of the date of the appointment. The guardian must provide copies of the inventory to each party and attorney of record.

If the guardian of the estate wishes to sell or mortgage any of the real property belonging to the minor, the guardian must file an application in the Probate Court that made the appointment. The court will hold a hearing on the application after notifying interested parties. The court may authorize the sale if it determines that it will be in the best interest of the minor.

The guardian must file periodic financial reports or accounts with the Probate Court showing all financial transactions that occurred on the minor's behalf during the accounting period. Upon receipt of the periodic financial report or account, the Probate Court will set a hearing, or notify interested parties of the right to a hearing upon request. A periodic financial report or account *must* be filed for the first year following appointment and at least once in every three-year period thereafter. More frequent financial reports or accounts may be ordered by the Probate Court. Whenever the guardian files a financial report or account, copies must be provided to each party and attorney of record.

The court may remove a guardian of the estate who becomes incapable, neglects to perform the required duties or mishandles the minor's assets, the court that granted the appointment may remove the guardian. The court will then appoint another guardian of the estate.

The guardianship of the estate will terminate when the minor reaches the age of 18. The guardian must file a final financial report or account upon termination of the guardianship, removal of the guardian or if the guardian submits his or her resignation to the court.

Testamentary Guardian

A sole or surviving parent may, by will, designate a person to serve as guardian of the person and/or estate of the minor after the parent's death. Following the death of the parent, the designated person must file an application with the Probate Court seeking confirmation as guardian.

PROBATE APPEALS

Any person aggrieved by an order, denial or decree of the Probate Court may appeal to the Superior Court. In general, appeals must be taken within 30 days from the date of the order, denial or decree. Appeals from matters concerning guardianship of the person shall be taken to the Superior Court for Juvenile Matters.

CONCLUSION

Guardianship has been described as a trust of the highest and most sacred character. The guardian is lawfully invested with the power and charged with the duty of taking care of a minor and, in appropriate cases, the minor's property, the minor being legally unable to act for himself or herself. In view of these serious responsibilities, a person acting as guardian for a minor's person and/or estate should always seek competent professional advice when making decisions on behalf of the minor.

NOTES

PROBATE COURT FORMS

Temporary Custody and Guardianship

Financial Report/Guardian.....	PC-442
Application/Removal of Guardian	PC-500
Petition/Immediate Temporary Custody.....	PC-501
Application/Temporary Custody.....	PC-502
Application/Appointment of Guardian of the Estate.....	PC-503
Application/Appointment of Temporary Guardian.....	PC-504
Application/Appointment of Permanent Guardian	PC-505
Petition/Reinstatement of Parent as Guardian of Minor...	PC-506
Custodian's Affidavit/Immediate Temporary Custody.....	PC-510
Guardian's Report/Guardianship of the Person of a Minor.....	PC-570
Petition/Emancipation of Minor.....	PC-905

These forms are available at the Probate Court or on the Probate Court website: www.ctprobate.gov. Forms for standby guardianship and co-guardianship must be reproduced from the *Probate Clerk's Manual*.